SHA CHAIM CHUAN v. CC LAND RESOURCES SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
JOHN LEE KIEN HOW JC
[ORIGINATING SUMMONS NO: WA-24NCVC-210-02-2021]
22 FEBRUARY 2022

Abstract – *The court is seized with the power, pursuant to s. 417 of the National Land Code, to direct the Registrar to do all such things as may be necessary to give effect to any judgment or order given or made in any proceeding relating to land, in this case a Registrar's caveat, to maintain the status quo of such land.*

LAND LAW: *Caveat – Registrar's caveat – Setting aside – Purchaser commenced action against developer based on breach of letter of undertaking – Purchaser entered Registrar's caveat over land – Whether Registrar's caveat ought to be ordered to maintain status quo – Whether ought to be set aside – National Land Code, s. 417*

The applicant had lodged a private caveat over a piece of land belonging to the respondent. The applicant then sought for an order to extend the private caveat pending the disposal of another suit, filed by the applicant and the respondent against the developer of the land, Geo Win Sdn Bhd ('Geo Win') at the High Court ('Suit 528'). Suit 528 pertained to a letter of undertaking ('LOU') where Geo Win promised/agreed to (i) build and transfer a complimentary unit to the applicant; (ii) sign a sale and purchase agreement with the applicant; and (iii) transfer the title of the complimentary unit to the applicant. Geo Win however refused to honour its promise and argued that the LOU was illegal and unenforceable. Therefore, in Suit 528, the applicant sought for, *inter alia*, a decree of specific performance of the LOU. However, the applicant later received a notice of intended removal of caveat from the Bentong Land Administrator. The applicant then sought an order to enter a Registrar's caveat over the land and such order was granted. The respondent filed an application to, *inter alia*, set aside the said order ('encl. 10').

Held (dismissing encl. 10):

(1) The court has the power, under s. 417 of the National Land Code ('NLC'), to direct the Registrar to do all such things as may be necessary to give effect to any judgment or order given or made in any proceeding relating to land. In this case, an order was granted by the court to extend the private caveat and, in the event that it has been removed, the court order that a Registrar's caveat be entered to ensure the same effect of maintaining the *status quo* pending the disposal of Suit 528. If there was no caveat on the land, all units would be sold off – including the complimentary unit – which would definitely deprive the applicant of his fruit of victory in the event he has successfully proven his claim in Suit 528. (paras 40 & 41)

(2) The applicant had caveatable interest over the land, based on the LOU between the applicant and Geo Win. Therefore, the order was made in accordance with the law and had met the purpose of the caveat. There was no reason to set aside the order. (paras 49 & 57)

Case(s) referred to:

AR PL Palaniappa Chettiar v. PL AR Letchumanan Chettiar & Anor [1981] 1 LNS 160 ***(refd)***

Boonsom Boonyanit v. Adorna Properties Sdn Bhd (1) [1990] 2 CLJ 973; [1990] 1 CLJ (Rep) 676 HC ***(refd)***

Chor Phaik Har v. Farlim Properties Sdn Bhd [1997] 4 CLJ 393 FC ***(refd)***

Ker Chee Chuan v. Katlyn Enterprise (M) Sdn Bhd [1990] 1 LNS 14 HC ***(refd)***

Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor [1995] 3 CLJ 520 CA ***(refd)***

N Vangedaselam v. Mahadevan & Anor [1976] 1 LNS 80 FC ***(refd)***

R A P Nathan v. Hj Abdul Rahman Hj Yusoff & Ors [1979] 1 LNS 85 HC ***(refd)***

Takako Sakao v. Ng Pek Yuen & Anor (No 2) [2010] 1 CLJ 419 FC ***(refd)***

Legislation referred to:

Companies Act 2016, s. 213

National Land Code, ss. 319, 320(1)(a), 322(1), (2), (5A), 323(1)(a), 326(2), 417

For the applicant - Leong Sher-How; M/s Leong & Partners

For the respondent - Lim Ping Kok; M/s CL Teh & Lim

Reported by Najib Tamby

JUDGMENT

(Respondent's Application In Encl. 10)

John Lee Kien How JC:

Introduction

[1] The respondent filed an application in encl. 10 ("encl. 10") for, *inter alia*, an order to set aside an *ex parte* court order dated 8 April 2021 ("the said order"). For purpose of this judgment, I will refer to the parties based on their position in the main suit.

Facts Of The Case

[2] The private caveat in issue was lodged by the applicant on 7 September 2020 *via* Private Caveat Registration No. 506/2020 ("the private caveat") over all that piece of land held under H.S (M) 8128, PT 23188, Bukit Tinggi, Mukim Bentong, Daerah Bentong, Negeri Pahang Darul Makmur ("the land"). The respondent is the registered proprietor of the land. Through the *ex parte* originating summons in encl. 1 ("encl. 1"), the applicant, *inter alia*, has sought for an order to extend the private caveat pending the disposal of Kuala Lumpur High Court Suit No. WA-22NCVC-528-08-2020 ("Suit 528"). Suit 528 was filed by the applicant for a decree of specific performance and to assert his right and interest over the land. The

applicant also lodged the private caveat on the land. Later, the applicant received a notice of intended removal of caveat in Form 19C from Bentong Land Administrator ("Form 19C"). This was in consequent to an application to remove the private caveat in the land office.

[3] The applicant, during the *ex parte* hearing of the OS, had also orally applied to this court for an order to the Registrar to enter a Registrar's caveat over the land. At the end of the hearing, the said order was duly granted by this court, namely:

(a) Bahawa Kaveat Persendirian yang dimasukkan oleh Pemohon ke atas hartanah yang dipegang di bawah HS (M) 8128, PT 23188, Bukit Tinggi, Mukim Bentong, Daerah Bentong, Negeri Pahang Darul Makmur ("Tanah tersebut") pada 7.9.2020 dengan Perserahan No. 506/2020 ("Kaveat tersebut") dilanjutkan menurut Seksyen 326(1B) dan 326(2) Kanun Tanah Negara 1965 sehingga penentuan muktamad Guaman No. WA-22NCVC-528-08/2020 di Mahkamah Tinggi Kuala Lumpur, di mana perlanjutan berkuatkuasa mulai dari 3.2.2021;

(b) Bahawa Pentadbir Tanah, Pejabat Daerah dan Tanah Bentong, Pahang hendaklah melakukan semua perkara yang diperlukan untuk memberi kesan kepada perintah yang dibuat oleh Mahkamah yang Mulia ini termasuk memasukkan Kaveat Pendaftar ke atas Tanah tersebut.

[4] The respondent then filed encl. 10 to set aside the said order. Enclosure 10 was supported by an affidavit ("AIS") affirmed by one Tan Boon Shen dated 17 September 2021 on behalf of the respondent and also on behalf of a third-party developer, Geo Win Sdn. Bhd (1176012-T) ("Geo Win"). Geo Win is not a party in this originating summons. Geo Win is the developer of the land who is holding a power of attorney ("PA") from the respondent and has been duly authorised by the respondent to develop the land.

Suit 528

[5] Suit 528 was filed by the applicant and the respondent against Geo Win in relation to a letter of undertaking dated 6 April 2016 ("LOU"). Through the LOU, Geo Win promised to build and transfer one unit of double-storey shop in favour of the applicant upon the happening of one of the three events contemplated by the parties therein. The said unit was described in Suit 528 as the complimentary unit ("complimentary unit").

[6] Geo Win has also promised to sign a sale and purchase agreement with the applicant and further agreed to transfer the title of the complimentary unit to the applicant.

[7] The complimentary unit was one out of 16 units of double-storey semi-D shops to be developed on the land by Geo Win pursuant to a joint venture transaction between the respondent (as the landowner) and Geo Win (as the developer).

[8] It is the applicant's case in Suit 528 that he is entitled to the complimentary unit. However, Geo Win refused to honour its promise and instead pleaded in defence that the LOU is, among others, illegal and unenforceable. As such, in Suit 528, the applicant sought for, *inter alia*, a decree of specific performance of the LOU.

Submission By The Applicant

[9] The applicant premised that in applying for an extension of the private caveat under the National Land Code ("NLC"), the burden lies with the applicant to show that he has the caveatable interest on the land. The applicant further contended that this burden can be easily discharged as the applicant's caveatable interest is obviously present given the promise and undertaking made by Geo Win under the LOU to deliver and transfer the complimentary unit to the applicant.

[10] Therefore, the applicant submitted that the order was correctly granted in accordance with the law and it meets the purpose of a private caveat *ie*, to preserve the *status quo* pending the outcome of Suit 528. The outcome would be unimaginable if Geo Win is permitted to sell of all units including the complimentary unit and leaving the High Court in Suit 528 to decide on a cause that has been orchestrated as academic by the time the trial commenced.

[11] The applicant referred to abundant of authorities to show that a private caveat can be lodged and remains on a particular piece of land to protect the interest of the caveator pending the full determination of his rights in a suit.

[12] The applicant acknowledged that they were mindful that two months have passed at the time when encl. 1 was heard on 8 April 2021. They had indeed filed it much earlier. However, in view of the imposition of the movement control order by the Government and all other related reasons, it was only heard and determined by the court in April 2021.It was for this reason the applicant prayed for the said order to take effect retrospectively from 3 February 2021.

[13] The applicant stressed that it is a discretion of the court to grant extension of a private caveat. The court also has the power to hear and allow an application and make an order for the extension of a caveat even after the two months period in Form 19C has lapsed or by extension to make an order *nunc pro trunc*. Also, the court has the power to order the Registrar to enter a Registrar's caveat to give accord to any order from the court.

[14] As such, it is the applicant's case that there are ample and sufficient reasons to justify the extension of the private caveat and the entry of a Registrar's caveat on the land to preserve the *status quo* pending the outcome of Suit 528.

Submission By The Respondent

[15] The respondent started their submission by establishing the *locus standi* of Geo Win. Geo Win's capacity and *locus standi* is found in the PA as can be seen in exh. GW1 of the AIS.

[16] Geo Win's power, capacity and *locus standi* in relation to this matter is fortified by the fact that the applicant himself confirmed and acknowledged the existence of this PA in the affidavit affirmed by the applicant himself on 3 February 2021.

[17] The respondent alleged that the applicant had failed to make a full and frank disclosure to the court that the PA was duly executed on 5 August 2019 and further to exhibit the same for the court's perusal. As a result, Geo Win was excluded from a fair hearing to contest this matter.

[18] Next, the respondent argued that this is not a proper forum for the applicant to apply for the extension of the private caveat. The respondent maintained that the court can only grant one order under s. 326(2) of the National Land Code ("NLC") namely from time to time extend the said period of two months. Section 326(2) of the NLC does not allow the court to grant any other remedy other than the above.

[19] The respondent challenged the authority and jurisdiction of the court to grant the said order for the register to enter his caveat on the land.

[20] It is the respondent's view that s. 326 of the NLC clearly provides that all extension of time shall not be more than two months only. Any extension beyond two months shall be null and void. If the applicant so desires to obtain a Registrar's caveat, the applicant must first file a formal application with the Registrar of the land registry under s. 319 of the NLC.

[21] The respondent further premised that even if the applicant filed the application before the Registrar, it may only rely on s. 320(1)(a) of the NLC that is for the prevention of fraud or improper dealing. To the respondent, only the Registrar can decide whether or not to enter the Registrar's caveat. There is no substance for the court to order for a Registrar's caveat to be lodged on the land. Therefore, the said order is allegedly, *ultra vires*, wrong and ought to be set aside.

[22] The respondent further argued that the applicant applied for an extension of time for the private caveat but the court had gone beyond its jurisdiction by ordering a Registrar's caveat instead. The court cannot, should not and ought not grant order and/or reliefs which is not prayed for or wholly inconsistent with the application itself.

[23] Next, the respondent alleged that the fact of an ongoing Suit 528 is not a factor to be considered in deciding s. 319 and s. 320 of the NLC. Caveatable interest is never a factor to be considered in s. 320 of the NLC for an application for Registrar's caveat under s. 319 of the NLC.

[24] The respondent submitted that pursuant to encl. 1, the applicant alleged to have a caveatable interest in plot 5. However, plot 5 is no longer exist. Therefore, the caveatable interest, if any, shall collapsed.

[25] Then, the respondent mooted that the applicant relied heavily on the LOU in order to maintain his claim. The LOU provided that the entitlement of the unit shall be decided by balloting as opposed to selecting. The applicant had also failed to comply with the requirement under the LOU. Therefore, the court ought not assist the applicant when the applicant failed to comply with the LOU itself.

[26] Next, the respondent submitted that the applicant is a director in the respondent company. As a director, the applicant shall at all times exercise his power for a proper purpose and in good faith in the best interest of the company.

[27] The respondent submitted that by suing his own company, it can never be in the best interest of the respondent let alone for a proper purpose. Thus, the applicant is in breach of his duty as a director under s. 213 of the Companies Act 2016 ("CA 2016").

[28] The applicant has a personal interest in plot 5. By entering a caveat over the respondent company in order to get a free unit has made a *mala fide* business judgment which can neither be appropriate nor in the best interest of the respondent company.

[29] As such, there is no valid basis in law or any justification on the facts before the court for the Registrar's caveat to be maintained. Therefore, encl. 10 ought to be allowed and the said order ought to be set aside.

Findings And Decision Of The Court

[30] After appraised the facts adduced by all the parties through affidavits and the exhibits and having considered the submissions by learned counsels for all parties, I dismiss encl. 10. My decision is based on the following findings.

[31] In our present case, the respondent had filed encl. 10 to set aside the said order. Also, the respondent applied for the Registrar's caveat registered on 13 July 2021 on the land according to the said order to be set aside.

The Law On Registrar's Caveat

[32] In general, the law on Registrar's caveat is as stated in ss. 319 and 320 of the NLC:

319. Nature and effect of Registrar's caveats

(1) A caveat under this section shall be known as a "Registrar's caveat", and:

(a) may be entered by the Registrar on the register document of title to any land of the circumstances specified in section 320;

(b) subject to sub-section (3), shall, so long as it continues in force, have the effect of prohibiting the registration, endorsement or entry on that document of:

(i) any instrument of dealing;

(ii) any claim to the benefit of a tenancy exempt from registration; and

(iii) any lien-holder's caveat.

320. Circumstances in which Registrar's caveats may be entered

(1) Subject to sub-section (2), a Registrar's caveat may be entered in respect of any land wherever such appears to the Registrar to be necessary or desirable:

(a) for the prevention of fraud or improper dealing; or

(b) for protecting the interests of:

(i) the Federation or the State Authority, or

(ii) any person who is in his opinion under the disability of minority, mental disorder or unsoundness of mind, or is shown to his satisfaction to be absent from the Federation; or

(ba) for securing that the land will be available to satisfy the whole or part of any debt due to the Federation or the State Authority, whether such debt is secured or unsecured and whether or not judgment thereon has been obtained; or

(c) by reason of some error appearing to him to have been made in the register or issue document of title to the land or any other instrument relating thereto.

(2) Knowledge by the Registrar of the fact that any land or interest therein has been acquired, or is to be held, by any person or body in a fiduciary capacity shall not of itself constitute a ground for entering a Registrar's caveat in respect of that land.

[33] I further refer to s. 417 of the NLC which says:

417. General authority of the Court

(1) *The Court or a Judge may by order direct the Registrar or any Land Administrator to do all such things as may be necessary to give effect to any judgement or order given or made in any proceedings relating to land, and it shall be the duty of the Registrar or Land Administrator to comply with the order forthwith.*

A (2) Where, pursuant to any order made by virtue of this section, the Registrar or any Land Administrator:

(a) cancels any instrument relating to land, or any memorial or other entry on any such instrument, or

B (b) makes any other amendment of, or addition, to, any such instrument,

he shall note thereon the reason for the cancellation, amendment or addition, and the date thereof, and shall authenticate the same by his signature and seal.

C (3) Where the Registrar or Land Administrator takes action under this section in respect of any land or any share or interest therein, he shall cause notice of his action to be served upon any person or body having a claim protected by caveat affecting the land, share or interest. (emphasis added)

D **[34]** Section 319 of the NLC provides that a Registrar's caveat may be entered by the Registrar on the register document of title to any land in any of the circumstances specified in s. 320 of the NLC. Section 320 of the NLC provides that a Registrar's caveat may be entered in respect of any land wherever such appears to the Registrar to be necessary or desirable, *inter alia*, for the prevention of fraud or improper dealing. Thus, the respondent alleged E that Registrar's caveat can only be entered in any of the circumstances mentioned in s. 320 of the NLC. However, the respondent seems to be ignorant of s. 417 of the NLC which they have not touched upon in their submission. By virtue of s. 417 of the NLC, the Registrar must also enter Registrar's caveat on the land in issue if he is so directed or ordered by the F court. This is exactly what happened in our present case.

[35] I refer to *AR PL Palaniappa Chettiar v. PL AR Letchumanan Chettiar & Anor* [1981] 1 LNS 160; [1982] 1 MLJ 232 where Wong Kim Fatt JC at p. 234 paras. A-D (left) held:

G In considering the question, I was requested by counsel to consider the judgment of Chang Min Tat J (as he then was) in the *Seet Soh Ngoh* case. The learned judge held in that case that the court had the power to order the Registrar, since he was before the court, to enter a Registrar's caveat to prevent the fraud and improper dealing. With respect, I am in agreement with the decision of the learned judge. I would go further to H consider (whether or not the Registrar is a party to the proceedings before the court) the question whether the court has the power to order him to enter his caveat under the provisions of s. 417(1) of the Code, reading as follows:

…

I *In my judgment, the provisions of s. 417(1) are clear and unambiguous. It vests the power in the High Court to direct by order the Registrar to carry out or give effect to any judgment or order given or made in any proceedings relating to land.* (emphasis added)

[36] It is therefore clear to me that s. 417 has vested the court, the power to order the Registrar to enter his caveat to carry out or give effect to: A

(i) any judgment; or

(ii) any order,

given or made in any proceedings relating to land. B

[37] The said order was given and made by the court in the proceeding on 6 April 2021 by which time, the private caveat might have been removed. In view that the same was not due to the fault of the applicant and in order to preserve the *status quo* of the land pending the outcome of Suit 528, this court has ordered and instructed that the Register to enter his caveat over the land. This is indeed as per s. 417 of the NLC. Thus, the respondent has failed in arguing that the Register must only enter his caveat as per ss. 319 and 320. C

[38] The respondent had alleged that the Registrar was not named as a party of the OS. He was not present during the hearing. Thus, the respondent argued that Registrar's caveat could not and ought not be entered. Since it was granted and ordered by the court, it was wrong and must be removed. With respect, this argument is totally misplaced and misconceived by the respondent. The *ratio* of Wong Kim Fatt JC in *AR PL Palaniappa Chettiar* (*supra*) has clearly explained this. The Registrar needs not be named in the suit or let alone be there during the proceeding or hearing when such order or judgment is made. I further refer to *Boonsom Boonyanit v. Adorna Properties Sdn Bhd (1)* [1990] 2 CLJ 973; [1990] 1 CLJ (Rep) 676; [1990] 3 MLJ 444 where Mohamed Dzaiddin J (as he then was) held at pp. 680 to 681 (CLJ); pp. 447 to 448 (MLJ), paras. F-I (right column) as follow: D E F

> In my opinion, notwithstanding the Registrar of Titles is not a party to this application, the court has power to order the Registrar to enter the Registrar's caveat under s. 417(1) of the Code which reads as follows:
>
> …
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> Encik Chan referred me to the decision of Wong Kim Fatt JC in *AR PL Palaniappa Chettiar*'s case where it was held that the High Court has the power under s. 417(1) to order the Registrar to enter the Registrar's caveat under s. 320 to prevent fraud or improper dealing whether or not the Registrar is a party to the proceedings. Having considered the reasoned judgment of the learned judicial commissioner, I need only say that I am in complete agreement with his decision and adopt the same in this present application. *However, what I need to emphasize here is simply that s. 417 empowers the court to direct by order the Registrar to do all such things as may be necessary to give effect to the court's order or judgment which included ordering the Registrar to enter his Registrar's caveat under s. 320.* In the instant case, after a proper scrutiny of the subsequent affidavits of Mr Bill Saw (lampiran 11) and the applicant (lampiran 12) and the writ and the statement of claim, G H I

I am satisfied that in the circumstances of the whole case the Registrar's caveat is necessary to be entered to prevent fraud or improper dealing in respect of the said land and should remain until the final determination of the dispute in Civil Suit No 22-401 of 1989. (emphasis added)

[39] In the Federal Court case of *Takako Sakao v. Ng Pek Yuen & Anor (No 2)* [2010] 1 CLJ 419; [2009] 6 MLJ 751, Gopal Sri Ram FCJ held that:

This court by its judgment dated 16 October 2009 found for the appellant on the basis that she is the beneficiary under a constructive trust of which the second respondent is trustee. The subject matter of the trust is the property referred to in that judgment. Argument was sought from counsel as to the nature of the specific relief that should be granted having regard to the facts of this case and also as to the type of costs order that should be made. Evidence was filed by both sides as to the present state of affairs. It emerged, undisputed, that the second respondent had sold the subject property to a third party and that the instrument of transfer had been presented for registration. To prevent any further fraud and for the purpose of preserving the subject property *in specie*, on 27 October 2009 we directed the Registrar of titles to enter his caveat pursuant to s. 320 read with s. 321 of the National Land Code. We did so in the exercise of the powers conferred by s. 417 of the National Land Code. *It is settled that this court has ample jurisdiction to make consequential orders to give effect to its judgment (see Tan Soo Bing & Ors v. Tan Kooi Fook [1996] 3 MLJ 547) including directing the entry of a Registrar's caveat (see Seet Soh Ngoh v. Venkateswara Sdn Bhd & Anor [1976] 1 MLJ 242) and to ensure that its judgment in particular cases is not defeated by intervening events.* (emphasis added)

[40] Based on the above authorities, the law is clear that this court has the power under s. 417 of the NLC to direct the Registrar to do all such things as may be necessary to give effect to any judgment or order given or made in any proceeding relating to land. In our present case, an order was granted by this court to extend the private caveat and in the event that it has been removed, the court ordered that a Registrar's caveat be entered to ensure the same effect of maintaining the *status quo* pending the disposal of Suit 528. This is rightfully within the power so granted s. 417 of the NLC.

[41] The said order was granted only to freeze the *status quo* pending adjudication of Suit 528 by the High Court. If there is no caveat on the land, the consequences would be unthinkable. It means all units would be sold off including the complimentary unit which would definitely deprive the applicant of his fruit of victory in the event that he has successfully proven his claim in Suit 528. Indeed, this court is only determining the application concerning caveat on the land, and not on the contractual disputes between the parties. As to be elaborated next, it is my finding that the applicant does have a caveatable interest. Hence, the said order was granted. It is safe to put a caveat on the land until the disputes in Suit 528 is disposed of by the court.

Caveatable Interest

[42] In the application to extend the private caveat, the applicant submitted that he has a caveatable interest on the land. However, the respondent has alleged that the applicant has no such caveatable interest to lodge the private caveat in the first place. Thus, the respondent further alleged that the said order was wrong. To this, again, with due respect, I disagree. I observed that the counsel for the respondent has argued by adopting the law and the test on injunction. This is again misplaced. Private caveat is in no way an injunction. It is a creation under the NLC to maintain the *status quo* of the parties. Unlike the requirement of "on the balance of convenience" in an injunction, what the caveator needs is only a caveatable interest. One needs to look no further than the NLC to determine this 'caveatable interest'.

[43] For ease of reference, s. 323 of the NLC is quoted here:

Applications for Entry of Private Caveats

323(1) **The persons and bodies at whose instance a private caveat may be entered are:**

(a) any person or body claiming title to, or any registrable interest in, any alienated land or undivided share in any alienated land or any right to such title or interest;

(b) any person or body claiming to be beneficially entitled under any trust affecting any such land or interest; and

(c) the guardian or next friend of any minor claiming to be entitled as mentioned in paragraph (b).

(2) Any such person or body wishing to apply for the entry of such a caveat shall do so in Form 19B and such application shall be attested in accordance with section 211 notwithstanding that the provisions dealt with dealings in alienated land, and shall state therein the nature of the claim on which his application is based, and whether the caveat is to be expressed to bind the land itself or an undivided share in the land or a particular interest only, and the last known address of the proprietor if the caveat is to be expressed to bind the land itself or an undivided share in the land.

(3) Any application under this section shall be accompanied by:

(a) the prescribed fee;

(b) the grounds giving rise to the claim thereto, verified by a statutory declaration by the applicant or his advocate and solicitor; and

(c) if relating to a part of the land, a description or a plan of the land affected, and if relating to an undivided share in the land or a part thereof, a description, which is sufficient for identification. (emphasis added)

[44] What is clear is that there are four categories of caveatable interest stated under s. 323(1)(a), namely when a person is:

(i) claiming title to any alienated land or to undivided share in any alienated land;

(ii) claiming any registerable interest in any alienated land or to undivided share in any alienated land;

(iii) claiming any right to such title; or

(iv) claiming any right to such registerable interest.

[45] In *Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor* [1995] 3 CLJ 520 at p. 547, Gopal Sri Ram JCA (as he then was), discussed at length what is meant by caveatable interest. He stated:

> … Caveatable interests. These are unregistered interests which are capable of protection by the entry of a private caveat.

[46] The NLC has made it clear that once the caveator has any such interest, he has the caveatable interest. The applicant here is claiming that, as per the LOU, he is entitled to one complimentary unit. He thus is claiming his right/interest to such title to an undivided share in the land pending the subdivision (which would be done after the completion of the development). It is obvious therefore that he has such caveatable interest. It is apt to note here that lodgement of a caveat doesn't in anyway mean any dealings or transfer of right or title. Caveat, after all, is only a shield to maintain or to freeze the *status quo* while awaiting some impending event to take place.

[47] The caveator does not have to prove that he actually has an interest in that land. This is the *ratio* of Syed Agil Barakbah J (as he then was) in *R A P Nathan v. Hj Abdul Rahman Hj Yusoff & Ors* [1979] 1 LNS 85; [1980] 1 MLJ 248 (at p. 251):

> … the whole system of caveats is founded on the principle that they exist for **the protection of alleged as well as proved interests and of interest that has not yet become actual interests in land.** (emphasis added)

[48] The same was echoed by Richard Talalla JC in *Ker Chee Chuan v. Katlyn Enterprise (M) Sdn Bhd* [1990] 1 LNS 14; [1990] 2 MLJ 91:

> … **they exist for the protection of alleged as well as proved interests** and that it is not only a person who has a right to a registerable interest in land that may enter a caveat against the land but also any person claiming title to or any registerable interest in any alienated land or even claiming only a right to such title or registerable interest who may enter a caveat. (emphasis added)

[49] Based on the above authorities, it is my considered view, therefore, that the applicant in this present suit, has a caveatable interest over the land based on the LOU between applicant and Geo Win. Thus, the said order was made in accordance with the law and meet the purpose of the caveat, that is to preserve the *status quo* of the land pending the disposal of Suit 528.

[50] Another question for this court to answer is whether a person whose interest is only in a specific portion of the land may enter a caveat against the land. The counsel for the respondent during the hearing of encl. 10 has argued that no caveat can be lodged when one is only claiming a portion of the land. They then argued that the private caveat should not be lodged in the first place. Again, his argument is misconceived.

[51] As mentioned earlier, private caveat can be lodged by anyone who is claiming title or right to such title to any alienated land or to any undivided share in such land. Thus, it is common in the conveyancing practice in Malaysia that a purchaser of a lot or unit in an undivided land or his financier, in order to protect his or their interest, would lodge a private caveat pending the issuance of the subdivided title. To allege that the lodgement of the private caveat is wrong is a blunt ignorant of the law and practice on this. This court is guided by the *ratio* of Suffian LP in the leading case of *N Vangedaselam v. Mahadevan & Anor* [1976] 1 LNS 80; [1976] 2 MLJ 161. The same was restored to its glory by Edgar Joseph Jr FCJ in *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1997] 4 CLJ 393; [1994] 3 AMR 41:2103. The 1998 amendment through National Land Code (Amendment) Act 2001 (Act A1104) which came into force in 1 December 2001 amending relevant portion of s. 322 has further confirmed this. The current provision in s. 322(1), (2) and (5A) is the result of this amendment. Suffice to conclude here that these provisions confirm that the NLC allows the lodgement of private caveat over a land even if the caveator is only claiming title or right to a portion of the undivided land. This is exactly the case for the applicant here. He is claiming his right over the complimentary unit. Thus, he lodged the private caveat.

[52] In encl. 1, the applicant, being the caveator, only pray for an extension of the private caveat to safeguard his claim over the complimentary unit mentioned in the LOU pending the outcome of Suit 528.

[53] It is my finding that all the above have clearly supported and justified the granting of the said order. The respondent has failed to establish its application in encl. 10 to set aside the said order. However, for the completeness of discussion, I shall briefly elaborate the next sub-issue. All the other issues raised by the respondent are of no relevance to this court because those issues are related with the dispute between the parties which is to be determined by the court in Suit 528.

Circumstances In Which Registrar's Caveat May Be Entered

[54] In this case, Suit 528 was filed by the applicant and the respondent against Geo Win. Based on the LOU, Geo Win promised to build and transfer the complimentary unit to the applicant. Geo Win also promised to sign a sale and purchase agreement with the applicant and further agreed to transfer the title of the complimentary unit to the applicant.

[55] While Suit 528 was ongoing, there was an allegation that Geo Win's director and the then director of the respondent were acting in cahoots to undermine the interest of the respondent in respect of the subject matter under Suit 528.

[56] Based on the above, clearly there is something suspicious going on with regard to the land. I am further convinced by the applicant's submission that without the Registrar's caveat, some fraud or improper dealing might take place. As mentioned earlier, it is not the duty of this court to adjudicate or determine the dispute between the parties. That is the duty of the court in Suit 528. As far as this court is concerned, all these justify the extension of the private caveat and the order that in the event the private caveat has already been removed, the Registrar is to enter his caveat over the land pending the outcome of Suit 528.

Conclusion

[57] In respect of the present case, the applicant had shown to the court that he has the caveatable interest against the land and I agree with the applicant's submission regarding the same. I also agree with the applicant that, without the caveat, if the applicant were to succeed in Suit 528, there is a possibility that they would not be able to get the complimentary unit and hence would suffer loss which would be difficult to quantify. Thus, to maintain the *status quo* pending the outcome of Suit 528, caveat need to be extended. Since the private caveat has already been removed, the entry of a Registrar's caveat is crucial to maintain the *status quo* pending the outcome of Suit 528. The Registrar was thus rightfully instructed to enter his caveat in order to give effect to the order given by this court to freeze and maintain the *status quo* of the land pending the outcome of Suit 528. Therefore, the said order was properly made under the circumstance of the case. I see no reason to set aside the same.

[58] Having read the affidavits and exhibits filed before this court and having heard the submissions by the parties, I find that it is necessary that the *status quo* be maintained till all the disputes among the parties are resolved in Suit 528. I find no reason to set aside the said order. Therefore, I hereby dismiss the respondent's application in encl. 10 with cost.